

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations

Section 3406(b), Mediterranean Fruit Fly Interior Quarantine

INITIAL STATEMENT OF REASONS/

POLICY STATEMENT OVERVIEW

Description of the Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulation is Intended to Address

These regulations are intended to address the obligation of the Secretary of Food and Agriculture to protect the agricultural industry of California from the movement and spread within California of injurious plant pests.

Specific Purpose and Factual Basis

The specific purpose of Section 3406(b) is to provide for the State to regulate the movement and possible carriers of Mediterranean fruit fly (Medfly) from the area under quarantine to prevent the artificial spread of the Medfly to noninfested areas to protect California's agricultural industry.

The factual basis for the determination by the Department that the emergency amendment of Section 3406(b) was necessary is as follows:

Medfly is a destructive insect pest which attacks the fruit of various plants including over 150 crops such as citrus, tomatoes, grapes, avocados, peaches, and cherries. The female punctures host fruit to lay eggs which develop into larvae. The punctures admit decay organisms that may cause tissue breakdown. Larval feeding causes breakdown of fruit tissue. Fruits with egg punctures and larval feeding are generally unfit for human consumption. Pupae may be found in fruit, but normally are found in soil.

On November 2, 2005, one mated female Medfly laden with eggs was taken from a trap located at 8572 Comet Street, Rancho Cucamonga. On November 4, 2005, a mated female Medfly laden with eggs was taken from a trap located at 337 South San Antonio Avenue, Upland. On November 8, 2005, a mated female Medfly laden with eggs was taken from a trap located at 425 East 24th Street, Upland. On November 19, 2005, another unmated female laden with eggs was

taken from a trap located at 946 East J Street, Ontario. The detection of multiple female adult Medfly fruit flies laden with eggs is indicative of three new epicenters of incipient infestations of the fly in the Rancho Cucamonga area of San Bernardino County. Therefore, it was necessary to expand the existing regulated area in 3406(b) to the west and to the south to encompass these new epicenters and the resulting 4-1/2 mile buffer area surrounding the epicenters. Additionally, as a result of expanding the buffer area to the west and north, the proposed regulated area now encompasses a small portion of eastern Los Angeles County.

As a result of trapping adult female flies on September 27, 2005, the Department made an emergency amendment, effective October 7, 2005, to Section 3406(b) which added approximately 72 square miles surrounding the Rancho Cucamonga area of San Bernardino County to the regulation. Subsequently, additional adult female flies were taken from traps resulting in another two emergency amendments to the regulation; 1) effective on October 17, 2005, expanded the regulated area surrounding Rancho Cucamonga by 13 square miles; and, 2) effective October 25, 2005, expanded the area by 17 square miles.

If the fly were allowed to spread and become established in host fruit production areas, California's agricultural industry would suffer losses due to decreased production of marketable fruit, increased pesticide use, and loss of markets if other states or countries enacted quarantines against California products.

This emergency amendment added approximately 41 square miles to the existing area (approximately 102 square miles) under quarantine that surrounds the Medfly infestation in the Rancho Cucamonga area of San Bernardino County. This emergency amendment resulted in approximately 143 square miles as being that area surrounding Rancho Cucamonga which will be regulated under Section 3406(b). The expansion of the regulated area to the west and north now also includes a small portion of eastern Los Angeles County. To prevent artificial spread of the fly to noninfested areas to protect California's agricultural industry, it is necessary immediately to regulate movement of hosts which can carry the fly within and from the infested area and surrounding buffer zone. Therefore, it was necessary to amend Section 3406(b) on an emergency basis.

The proposed expansion of the quarantine area for Rancho Cucamonga includes multiple sites as the epicenter and a buffer zone which extends approximately 4-1/2 miles in each direction from each epicenter. A buffer zone is necessary because the fly can spread naturally (as well as being spread artificially in infested hosts). The proposed boundary line was drawn jointly by the United States Department of Agriculture, the California Department of Food and Agriculture, and the agricultural commissioners of Los Angeles and San Bernardino counties. The proposed quarantine area is considered the minimum area around the epicenter sites which should be regulated to prevent artificial spread of Medfly to noninfested areas.

Estimated Cost or Savings to Public Agencies or Affected Private Individuals or Entities

The Department of Food and Agriculture has determined that Section 3406 does not impose a mandate on local agencies or school districts, except that agricultural commissioners of counties under quarantine have a duty to enforce it. No reimbursement is required under Section 17561 of the Government Code because the Agricultural Commissioner of San Bernardino County requested the change in the regulations.

The Department also has determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.

The Department has determined that the proposed action will not have a significant adverse economic impact on housing costs or California businesses, including the ability of California businesses to compete with businesses in other states. The Department's determination that this action will not have a significant adverse economic impact on businesses was based on the following:

There are no known organic growers. The Department has identified approximately four conventional growers within the quarantine area. Two of the host fruit growers cover each fruit with a plastic bag as a routine cultivation practice in order to obtain the highest quality fruit. The

Department has evaluated this procedure and determined that such a practice will prevent the fruit from becoming infested by the Medfly and that no additional safeguarding actions or treatments are necessary. Another grower harvested all of their host fruit prior to the implementation of the regulation and the Department believes eradication will be achieved prior to next season's crop being susceptible to attack by the Medfly. The final grower produces leafy vegetables that are not a host. Therefore, there is no host fruit located outside the core area (a one mile area surrounding the infested sites) that may have to be treated with Malathion or Spinosad bait spray before it can be moved. Should eradication fail to be achieved by the end of next season, one grower would have to treat $\frac{1}{2}$ of one acre with the Malathion bait or Spinosad bait spray. The Malathion spray costs are approximately \$5 per acre for product with approximately 10 required applications. Spray applications may be made by a commercial applicator or by the growers. Growers routinely spray for other plant pests so the additional applications would not be a significant expense.

Within the quarantine area, the Department has identified 13 fruit sellers/vendors and two swap meets. These businesses must maintain quarantine commodities in a manner that precludes exposure to Medfly. Approved safeguards include maintaining the commodities indoors, in coolers, in plastic bags, enclosed behind window screen, or covered with fine mesh or plastic. All of these methods are very inexpensive. These businesses may experience a reduction in sales and reduced shelf life of the commodities. Neither of these reductions would represent a significant economic impact.

There are approximately 23 nurseries in the area under quarantine that must treat the soil of host plants and strip the fruit of host plants before they may be moved from or within the area under quarantine. The required treatment is a soil drench with diazinon. This treatment does not have to be repeated if the fruit is kept stripped from the plants. The cost of the treatment is low and existing nursery personnel perform the treatment and fruit stripping. The fruit is placed in plastic bags for landfill disposal. The plastic bags are inexpensive and the extra material for landfill disposal does not add appreciably to their existing disposal costs.

No business has gone out of business due to any Medfly quarantine. Many businesses have benefited from the sales of safeguarding materials and others have benefited from Medfly expenditures by State and Federal governments.

Based on the above information, it was determined that the amendment of Section 3406(b) will not have a significant adverse economic impact on businesses. All costs associated with compliance with the regulation are relatively low.

Assessment

The Department has made an assessment that the amendment to this regulation would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

Alternatives Considered

The Department of Food and Agriculture must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

Information Relied Upon

The Department is relying upon the following studies, reports, and documents in the adoption of Section 3606(b):

“Annual Estimated Economic Impact-Third Expansion, Rancho Cucamonga Area, Los Angeles and San Bernardino Counties, Mediterranean Fruit Fly Interior Quarantine,” dated December 19, 2005, Plant Health and Pest Prevention Services, Permits and Regulations, California Department of Food and Agriculture.

“Establishments Affected by the Mediterranean Fruit Fly Interior Quarantine, Third Expansion, Rancho Cucamonga Area, San Bernardino County,” dated December 19, 2005, Plant Health and Pest Prevention Services, Permits and Regulations, California Department of Food and Agriculture.

“Annual Estimated Fruit Fly Quarantine Costs,” dated December 19, 2005, Plant Health and Pest Prevention Services, Permits and Regulations, California Department of Food and Agriculture.

Email dated December 12, 2005, from Nick Condos to Stephen Brown, “FWD: Grower Information,” and the forwarded email dated November 23, 2005, from Nawal Sharma to Nick Condos and its attachment.

Letter dated November 21, 2005, to Stephen Brown from Edouard P. Layaye, San Bernardino County Agricultural Commissioner.

Letter dated November 14, 2005, to Secretary A.G. Kawamura Brown from Kurt E. Floren, Los Angeles County Agricultural Commissioner.

“Pest and Damage Record #1363189,” dated November 19, 2005, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #1363157,” dated November 8, 2005, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #1363155,” dated November 4, 2005, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #1363152,” dated November 2, 2005, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.